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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
09/704,434	11/02/2000	Yuichi Yamagami	2271/62705	4780				
7590 Ivan S Kavrukov Cooper & Dunham LLP 1185 Avenue of the Americas New York, NY 10036		03/22/2007	<table border="1"><tr><td>EXAMINER</td></tr><tr><td>PLUCINSKI, JAMISUE A</td></tr></table>		EXAMINER	PLUCINSKI, JAMISUE A		
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3629								
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE					
3 MONTHS		03/22/2007	PAPER					

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/704,434

Applicant(s)

YAMAGAMI ET AL.

Examiner

Jamisue A. Plucinski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 17 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20070116</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/26/06 has been entered.

Information Disclosure Statement

2. The information disclosure statement filed 1/16/07 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each reference listed that is not in the English language. Applicant has cited 4 non-patent literature references, which are all in Japanese, and there is no translation of the references into English. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

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international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-6, 8-12, 17 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Arunapuram et al. (US 2002/0019759).
5. With respect to Claims 1-3, 6 and 18: Arunapuram discloses the use of a method for shipping items which can be from a first country to a second country (Paragraphs 0066 and 0068) comprising the steps:
 - a. Fulfilling order in a first country, packaging the items in the first country and consolidating the individual packages for a collective international shipment (Paragraphs 0077 and 0081);
 - b. Shipping the collective shipment to a second country (Paragraphs 0077 and 0081)
 - c. Dividing the collective shipment in the second country into individual packages and delivering the packages to the customer (crossdock, paragraph 0077);
 - d. Providing a first shipping charge (Charge based on Total WD, weight distance, S1 + S2, Page 15, Arunapuram discloses that the rates are calculated for each leg of route as well as total, paragraph 0077);
 - e. Providing a second shipping charge related to a virtual supplier location (the examiner considers the cross dock, or the port in the US, to be the virtual location, therefore the second charge would be the charge associated with the second leg of the route, S2);
 - f. Computing a difference between the first and second charges (Arunapuram discloses getting the ratios of each leg, and where the rates are associated with each ratio, Paragraphs 0138 and 0140); and

- g. Utilizing the computer difference to manage the allocation of costs (See Paragraphs 0126-0141), or utilizing the difference for managing unbilled shipping charges during a predetermined period of time (Paragraphs 0122 and 0165, as well as 0039, where Arunapuram discloses the orders can be run in batches, therefore the examiner considers this to be a determined time period, however often the batches are run).
- h. Arunapuram discloses the costs are sent to a freight payment module which keeps records in a FP database, which is used in an accounting system (Paragraphs 0052 and 0115), which the examiner considers to be internal cost management, and it is done after the payment is sent to the customer (Paragraph 0118). Arunapuram also discloses that the actual charged cost and the expected costs are used for internally updating rate tables and used for later time in the transportation planning (Paragraph 0124), which the examiner considers to be costs and product planning. Arunapuram further discloses the costs are used for cost allocation (paragraph 0154) and that after the customers are billed, the system determines if there is any internal billing that needs done (Paragraph 0165).
6. With respect to Claim 4: Arunapuram discloses utilizing weights to calculate rates, using rate tables (Paragraph 0104).
7. With respect to Claim 5: Arunapuram discloses utilizing zone rating for calculation of rates with in the US, which is the second country (Paragraphs 102 and 109).
8. With respect to Claims 8 and 9: Arunapuram discloses the first charge includes shipping individual packages within the 2nd country and includes the charge for shipping the collective shipment from the first country to the second country (the examiner considers the first charge to

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be the total charge, which would include all charges, for each route leg, Paragraphs 0077, and page 15, Total WD).

9. With respect to Claim 10: Arunapuram discloses that computing the second shipping charge comprising using a table for zone rating (Paragraphs 104 and 109).

10. With respect to Claim 11: Arunapuram discloses the calculating of the second shipping charge includes weight information (All rates calculated are based on weight, Paragraphs 0038, 0065 and 0104).

11. With respect to Claim 12: Arunapuram discloses the calculating of the second charge uses both weight and distance, which if shipped in the US, carriers such as UPS, use zones, instead of strait distance, therefore uses weight and zones (Paragraphs 102, 109)

12. With respect to Claim 13: Arunapuram discloses processing multiple order is optimization batches (Paragraph 0039). The examiner considers this to be carrying out the steps for a related time period, then repeating the steps for successive time periods.

13. With respect to Claim 17: Arunapuram discloses setting the second charges without referencing the first charge (each leg is calculated on its own, therefore the first charge references the second charge not the other way around, see Paragraphs 0066, 0071 and 0077).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arunapuram et al. (US 2002/0019759).

16. With respect to Claim 7: Arunapuram, as disclosed above, discloses multiple legs of the route being determined, and shipped using a shipping entity, however fails to disclose the entities which ship the consolidated shipment and the entities which ship the individual shipments are the same entity. This limitation is deemed to be non-functional descriptive material nonfunctional and is not functionally involved in the steps recited. The shipping steps would be performed the same regardless of what entity is actually carrying the shipment. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify Arunapuram, to have the shipping entities be the same for the entire route, in order to simplify the freight movement, so there does not have to be any coordination of different entities.

Response to Arguments

17. Applicant's arguments filed 12/26/06 have been fully considered but they are not persuasive.

18. With respect to Applicant's argument in terms of the provisional Application not providing support for the Arunapuram reference: The applicant has argued this point in the latest after final request for reconsideration, in which the examiner has provided sections in the provisional which shows the support for the sections of the Arunapuram reference which was

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used for the current rejection. The examiner considers the provisional of the Arunapuram reference to show support for the sections of the reference used in the rejection, therefore the argument is not considered to be persuasive. Please refer to the advisory action for specific sections in the provisional that shows support.

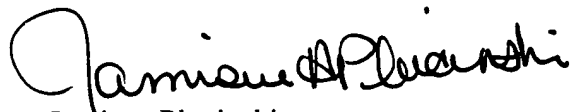
19. With respect to Applicant's argument that Arunapuram does not teach nor suggest several of the features of the claimed subject matter: The applicant has stated that Arunapuram does not teach not suggest providing first shipping charges related to actual charges by the shipping entity to the supplier for transportation of items by the shipping entity. It should be noted that the claims are written very broadly. The term "first shipping charges related to the actual charges" does not mean that the first shipping charge "is" the actual charge by the shipping entity, it simply means it is "related to" which means as long as it deals with the shipping entity charge, or is based off the shipping entity charge, and has other charges added in, then it would meet the limitation of the claim. As stated above in the rejection, Arunapuram discloses cost allocation methods and management of costs. The applicant has also stated that Arunapuram neither teaches nor suggests computing differences between the first shipping charges and the second shipping charges. Again it should be noted that these charges are merely "related" to the actual charges. Furthermore, Arunapuram looks at the differences between the estimated costs and actual costs and looks and calculates percentages of shipping costs for the users. The claims as written are very broad claims. Absent any actual calculations or any limitations on how the differences are used to manage, not merely stating broad areas of managing costs, the examiner considers Arunapuram to show the claimed invention. Rejections stand as stated above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Plucinski whose telephone number is (571) 272-6811. The examiner can normally be reached on M-Th (5:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jamisue Plucinski
Patent Examiner
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